

May 18, 2005

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

*Re: Notice of Proposed Rulemaking in the Matter of
Amendment of the Commission's Rules to Provide for
Flexible Use of the 896-901 MHz and 935-940 MHz Bands
Allotted to the Business and Industrial Land
Transportation Pool, WT Docket No. 05-62*

Comment

Dear Ms. Dortch:

Progeny LMS, LLC ("Progeny") hereby responds to the Commission's request for comment on proposed changes to Part 90 of its rules to provide flexibility to the 199 channels allocated to the Business and Industrial Land Transportation (B/ILT) Pools in the 900 MHz spectrum band. Progeny lauds the FCC's goal of flexible spectrum access in this band to "facilitate the provision of telecommunications services to consumers by eliminating unnecessary regulatory restrictions, and thereby provide greater flexibility in deploying the spectrum to respond to evolving market demands."¹ Progeny supports the Commission's intent, through these proposed policies and rules, to encourage the most efficient use of this spectrum and promote rapid deployment of facilities and services.² To this end, the FCC also should guard against stranding Multilateration-Location and Monitoring Service (M-LMS) licensees with outdated regulations elsewhere at 900 MHz.

¹ See *Notice of Proposed Rulemaking in the Matter of Amendment of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool* ("900 MHz NPRM") in WT Docket No. 05-62, February 16, 2005, at page 2.

² Id. at page 3.

For regulatory parity and symmetry in this band, Progeny believes that the same policy objectives that are driving FCC consideration of flexibility for B/ILT licensees at 896-901 MHz and 935-940 MHz should apply to a rulemaking proceeding examining elimination of unnecessary regulatory restrictions for M-LMS licensees at 902-928 MHz.

Consistent Application of Relief

Progeny is the largest holder of M-LMS licenses at 902-928 MHz. Three years after filing a petition for rulemaking, Progeny's efforts to secure the same regulatory flexibility for M-LMS licensees as the FCC has granted for other spectrum bands are well-known to the Commission.³ To maximize the public interest benefits of putting this spectrum to productive use, Progeny continues to seek a re-calibration of the LMS rules in the 902-928 MHz band. The petition is based on many of the same regulatory principles that are raised in the *900 MHz NPRM*: Increased flexibility in the use of spectrum to promote greater marketplace and technical efficiency while at the same time protecting spectrum users in the same band from harmful interference.⁴

The FCC's *900 MHz NPRM* cites the extent to which the Commission's proposals meet the criteria of Section 303(y). In 1999, Congress updated the Communications Act to recognize the potential benefits of spectrum flexibility, authorizing the FCC to provide for flexibility of use if: (1) It is consistent with international agreements to which the United States is a party, and (2) the FCC finds, after an opportunity for public comment that such an allocation would be in the public interest; such use would not deter investment in communications services and systems or technology development; and such use would not result in harmful interference among users.⁵ Progeny demonstrated in its petition that its proposal met all these Section 303 (y) criteria, noting that its requested flexibility will encourage investment in communications services and technology development because the current service limits have stifled LMS technology and service investment.⁶ In the *900 MHz NPRM*, the FCC, citing these Section 303(y) criteria, underscored the extent to which the public interest benefits of flexibility have become the guiding force in FCC spectrum rulemakings:

³ See *Petition for Rulemaking in the Matter of Progeny LMS, LLC, Amendment of Part 90 of the Commission's Rules Governing the Location and Monitoring Service to Provide Greater Flexibility*, RM-10403 (filed March 5, 2002) (*Progeny Petition*).

⁴ . Progeny submitted to the FCC in 2002 an expert technical analysis, demonstrating that the proposed rule changes can be undertaken to minimize potential interference to Part 15 devices.

⁵ 47 U.S.C. § 303(y).

⁶ See *Progeny Petition* at page 19.

“The Commission has identified the establishment of maximum feasible flexibility in both spectrum designations and allocations and service rules as a critical means of ensuring that spectrum is put to its most beneficial use. We would expect the economic efficiencies of flexibility to foster, not deter, technology development and investment in communications services and systems.”⁷

Flexibility Trade-Offs

For the B/ILT channels at 896-901/935-940 MHz, the FCC tentatively concluded that flexible use of the remaining 900 MHz “white space” also would meet the criteria of Section 303(y).⁸ In this regard, the NPRM asks for comments on possible trade-offs between flexibility and investment in technology and restrictions on spectrum use. Given the intrinsic variations between B/ILT services and the kinds of security applications that may be offered using M-LMS spectrum, the range of flexibility options lined up in the *900 MHz NPRM*, by definition, differs from Progeny’s pending request to eliminate outdated regulations. Yet, common considerations remain across the band concerning the trade-offs between flexibility and technology development and restrictions in spectrum use to prevent harmful interference to other users.

Progeny repeatedly has shown that the trade-off between its proposed rule changes and the status quo of the existing, outmoded regulatory restrictions tilts heavily in favor of a rulemaking exploring the flexibility questions raised in the petition. The current restrictions on spectrum use in this swathe of 900 MHz have led to a scenario in which spectrum with propagation characteristics ideally suited for public safety and security services is lying fallow.

While the *900 MHz NPRM* asks about the trade-offs of flexibility versus spectrum restrictions, the proposal repeatedly cites a need for spectrum flexibility in the band, in part by allowing any use permitted by the U.S. Table of Frequency Allocations (i.e., fixed or mobile services.) The “trade-off” between flexibility versus spectrum restrictions on which the *900 MHz NPRM* solicits comments has yet to be opened for discussion in a rulemaking covering M-LMS licensees. This is particularly relevant given

⁷ See *900 MHz NPRM* at page 6.

⁸ The NPRM defines “white space” at 900 MHz as the geographic areas not served by the existing B/ILT licenses.

that the *900 MHz NPRM* repeatedly cites “regulatory symmetry” at 900 MHz as a key consideration.⁹

Conclusion

Progeny supports the FCC’s consideration of these flexibility trade-off options at 900 MHz. The *900 MHz NPRM* notes that the proposed rules are designed to “serve our goals of providing service to the public consistently and expeditiously, and allowing the marketplace to respond to consumer demands.” While weighing such additional flexibility for B/ILT licensees at 900 MHz, the Commission should not overlook the promise of flexibility elsewhere in this band.

Sincerely,

/s/ Janice Obuchowski
Janice Obuchowski
Of Counsel

⁹ See *900 MHz NPRM*, page 7. The NPRM proposes allowing flexible use of the remaining 900 MHz white space, tentatively concluding that the FCC will continue to license these bands under Part 90 rules.